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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Arguments

1. The objection to Claim 18 is withdrawn in light of Applicant's amendment filed February 25, 2008. For Claims 1-3, 5-6, 9, 12-13, 15-19, and 21, Applicant's arguments filed February 25, 2008 have been fully considered but they are not persuasive.

Applicant's arguments with respect to Claims 4 and 20 have been considered but are moot in view of the new grounds of rejection.

2. Applicant argues that the elastic strips 40 are not directly bonded to the necked bodyside liner 24, and that the elastic layer 28 intervenes between the elastic strips 40 of Serbiak and the bodyside liner 24 of Serbiak. However, in addition to the elastic strips 40, Serbiak also teaches that the elastomeric material of elastic layer 28 may be present in strips (Figs. 1-9, col. 2, lines 42-47, col. 6, lines 24-31, col. 7, lines 11-38, col. 8, lines 26-48, col. 9, lines 18-23, Claims 10, 17, 23, 35; note that Serbiak teaches that the elastic layer 28 can be disposed where the extensible zones 30-30D are and does not need to extend over a greater area; the extensible zones are indicated in the figures by circles).

3. Applicant argues that Serbiak never says that the absorbent core 36 is to be bonded directly to the bodyside liner 24. However, Serbiak teaches that the absorbent core 36 is mounted between the outer cover layer 22 and the bodyside liner layer 24 (col. 6, lines 41-43). Serbiak teaches that the absorbent core 36 is fixedly attached to the base structure 26 to form a nonextensible area 37 (col. 4, lines 38-42, col. 8, lines

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17-26, Claims 3, 12, 31). The base structure 26 includes the bodyside liner layer 24 and the outer cover layer 22 (col. 6, lines 10-14, Claim 23). In light of Serbiak's teaching of the absorbent core being mounted between the outer cover and the bodyside liner, and of fixed attachment of the absorbent core to a structure which is described as including the bodyside liner, it would have been obvious to one of ordinary skill in the art to directly bond the absorbent core to the bodyside liner.

4. Applicant argues that Serbiak indicates that the absorbent core 36 can be mounted between the elastic layer 28 and the outer cover layer 22, a configuration in which the absorbent body structure 36 cannot be bonded directly to the bodyside liner 24, as described in col. 8, lines 10-11 of Serbiak. Applicant is correct that in the configuration described in col. 8, lines 10-11 of Serbiak the absorbent body structure 36 cannot be bonded directly to the bodyside liner 24. However, Serbiak clearly states that this is simply one embodiment, and that other embodiments are contemplated (col. 8, lines 8-17, col. 9, lines 17-24).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 1-6, 9, and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Serbiak (U.S. 5,846,232).
7. For Claim 1, Serbiak teaches an absorbent article including a chassis having a front waist region, a back waist region, and a crotch region extending between the front and back waist regions (Abstract, Figs. 1-9, col. 1, lines 6-10, col. 5, lines 62-67). An outer cover member 22 extends longitudinally between the front and back waist regions (Figs. 1-9, col. 6, lines 1-23). A bodyside liner 24 extends longitudinally between the front and back waist regions (Figs. 1-9, col. 6, lines 1-23). An absorbent body structure 36 is sandwiched between the outer cover member and the bodyside liner (Figs. 1-9, col. 7, line 39 to col. 8, line 60). Serbiak teaches the bodyside liner 24 including a material having a necked base layer of a fluid permeable material, the base layer material being necked by being tensioned in a first direction (col. 3, lines 17-41, col. 4, lines 50-65, col. 7, lines 1-10). At least a first and a second strip of elastomeric material are attached to the necked base layer material with a space between the strips such that a center necked region of the base layer material is bordered on at least two longitudinally extending sides by flat planar composite regions of the elastomeric

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materials and the base layer material, the center region generally aligned with the absorbent body structure 36 (first and second strips include elastic layer 28 in extensible zones 30-30D; center region includes the crosshatched area of absorbent core 36; Figs. 1-9, col. 2, lines 42-47, col. 6, lines 24-31, col. 7, lines 11-38, col. 8, lines 26-48, col. 9, lines 18-23, Claims 10, 17, 23, 35; note that Serbiak teaches that the elastic layer 28 can be disposed where the extensible zones 30-30D are and does not need to extend over a greater area; the extensible zones are indicated in the figures by circles). Serbiak teaches that outer cover member 22, bodyside liner 24, and elastomeric material 28 are secured to each other (col. 10, lines 38-48). Serbiak teaches the center region of the necked base layer material being attached to the immediately underlying portion of the absorbent body structure in registry with the center region of necked base layer material in its necked condition (Figs. 1-4 and 6, col. 2, lines 1-17, col. 4, lines 38-42, col. 6, lines 10-44, col. 8, lines 7-48; note that the cross-hatched area 37 of the absorbent core 36 is secured to base structure 26, which includes bodyside liner 24). The composite regions are fully capable of stretching in at least a second direction of the absorbent article (composite regions include elastic layer 28 in extensible zones 30-30D; Figs. 1 and 3-6; col. 1, lines 39-67, col. 2, lines 17-42, col. 4, lines 50-65, col. 5, lines 45-47, col. 6, lines 1-10, col. 8, lines 26-48, col. 10, line 48 to col. 11, line 26, Claims 1 and 9). Serbiak teaches that attaching the absorbent core, which is nonextensible, to the base structure prevents extensibility of the absorbent article in the area controlled by the attachment of the absorbent core to the base structure (Figs. 1-4 and 6, col. 4, lines 38-49, col. 8, lines 8-26). Note that Figs. 1,

3, 5, and 6 of Serbiak are top views with the bodyside liner uppermost, which suggests that the attachment indicated by the cross-hatching in these figures includes direct attachment between the absorbent body structure and the necked base layer material of the bodyside liner. **Serbiak does not expressly teach that the first and second strips of elastomeric material are bonded directly to the necked base layer material, nor that the attachment of the center region of the base layer material to the underlying portion of the absorbent body structure is by direct bonding.** In light of Serbiak's teaching of securing the elastomeric material to the necked base layer material of the bodyside liner, it would have been obvious to one of ordinary skill in the art to directly bond the elastomeric material to the necked base layer material. In light of Serbiak's indication in Figs. 1, 3 and 5-6 of attachment to the absorbent body structure being apparent in a top view, and Serbiak's teaching that attachment of the absorbent body structure to the base layer material prevents extensibility in the area of the absorbent body structure, it would have been obvious to one of ordinary skill in the art to include direct bonding of the base layer material of the bodyside liner to the underlying portion of the absorbent body structure.

8. For Claim 18, Serbiak teaches an absorbent article including a chassis having a front waist region, a back waist region, and a crotch region extending between the front and back waist regions (Abstract, Figs. 1 and 3-6, col. 1, lines 6-10, col. 5, lines 62-67). An outer cover member 22 extends longitudinally between the front and back waist regions (Figs. 1-9, col. 6, lines 1-23). A bodyside liner 24 extends longitudinally between the front and back waist regions (Figs. 1 and 3-6, col. 6, lines 1-23). An

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absorbent body structure 36 is sandwiched between the outer cover member and the bodyside liner (Figs. 1 and 3-6, col. 7, line 39 to col. 8, line 60). Serbiak teaches the bodyside liner 24 including a material having a necked base layer of a generally fluid permeable material, the base layer material being necked by being tensioned in a longitudinal direction (col. 3, lines 17-41, col. 4, lines 50-65, col. 7, lines 1-10). The necked base layer includes a center region extending in the longitudinal direction and disposed between a first side region extending in the longitudinal direction and a second side region extending in the longitudinal direction (Figs. 1 and 3-6, col. 3, lines 17-41, col. 4, lines 50-65, col. 7, lines 1-10). A strip of elastomeric material is attached to the necked base layer material along the longitudinally extending first side region to form a flat planar composite region such that the center region of the necked base layer material is adjacent a longitudinally extending composite region of the elastomeric material and the base layer material (strip includes elastic layer 28; center region includes the crosshatched area of absorbent core 36; Figs. 1-9, col. 2, lines 42-47, col. 6, lines 24-31, col. 7, lines 11-38, col. 8, lines 26-48, col. 9, lines 18-23, Claims 10, 17, 23, 35; note that Serbiak teaches that the elastic layer 28 can be disposed where the extensible zones 30-30D are and does not need to extend over a greater area; the extensible zones are indicated in the figures by circles). Serbiak teaches that outer cover member 22, bodyside liner 24, and elastomeric material 28 are secured to each other (col. 10, lines 38-48). Serbiak teaches the center region of the necked base layer material generally overlying and attached to the immediately underlying portion of the absorbent body structure in registry with the center region of necked base layer material

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in its necked condition (Figs. 1-4 and 6, col. 2, lines 1-17, col. 4, lines 38-42, col. 6, lines 10-44, col. 8, lines 7-48; note that the cross-hatched area 37 of the absorbent core 36 is secured to base structure 26, which includes bodyside liner 24). The center region of base layer material remains generally non-elastic (nonextensible area 37 is non-elastic, col. 8, lines 18-36). The composite regions are fully capable of stretching in at least a transverse direction in use of the absorbent article (Figs. 1-4 and 6, col. 7, lines 11-38, col. 11, lines 8-12). Serbiak teaches that attaching the absorbent core, which is nonextensible, to the base structure prevents extensibility of the absorbent article in the area controlled by the attachment of the absorbent core to the base structure (Figs. 1-4 and 6, col. 4, lines 38-49, col. 8, lines 8-26). Note that Figs. 1, 3, 5, and 6 of Serbiak are top views with the bodyside liner uppermost, which suggests that the attachment indicated by the cross-hatching in these figures includes direct attachment between the absorbent body structure and the necked base layer material of the bodyside liner. Serbiak does not expressly teach that the strip of elastomeric material is bonded directly to the necked base layer material, nor that the attachment of the center region of the base layer material to the underlying portion of the absorbent body structure is by direct bonding. In light of Serbiak's teaching of securing the elastomeric material to the necked base layer material of the bodyside liner, it would have been obvious to one of ordinary skill in the art to directly bond the elastomeric material to the necked base layer material. In light of Serbiak's indication in Figs. 1, 3 and 5-6 of attachment to the absorbent body structure being apparent in a top view, and Serbiak's teaching that attachment of the absorbent body structure to the base layer material prevents

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extensibility in the area of the absorbent body structure, it would have been obvious to one of ordinary skill in the art to include direct bonding of the base layer material of the bodyside liner to the underlying portion of the absorbent body structure.

9. For Claims 2 and 19, Serbiak teaches the first and second strips of elastomeric materials being superimposed on and aligned with lateral sides of the underlying base layer material (first and second strips include elastic layer 28 in extensible zones 30-30D; Figs. 1-9, col. 2, lines 42-47, col. 6, lines 24-31, col. 7, lines 11-38, col. 8, lines 26-48, col. 9, lines 18-23, Claims 10, 17, 23, 35).

10. For Claim 3, Serbiak teaches the first and second strips of elastomeric materials including an elastic film (first and second strips include elastic layer 28 in extensible zones 30-30D; Abstract, Figs. 1, 3-6, and 8, col. 2, lines 42-47, col. 7, lines 11-39, Claims 23, 43, and 46). Serbiak teaches the strips being attached to the base layer material, as described above for Claim 1 in paragraph 7. Serbiak teaches a neck bonded laminate as part of the bodyside liner 24 (col. 4, lines 50-65, col. 7, lines 1-10; note U.S. Patent No. 5,226,992 to Morman is incorporated by reference). Serbiak does not expressly teach the first and second strips and the base layer material being a neck bonded laminate. However, direct bonding between the first and second strips and the necked base layer material would form a neck bonded laminate. It would have been obvious to one of ordinary skill in the art to directly bond the first and second strips and the necked base layer material, for the same reasons as described above for Claim 1 in paragraph 7; this would form a neck bonded laminate.

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11. For Claims 4 and 20, Serbiak teaches the first and second strips of elastomeric materials being attached to the base layer material in a generally untensioned state (first and second strips include elastic layer 28 in extensible zones 30-30D, col. 1, lines 55-60, col. 3, lines 53-66, col. 7, lines 22-38, col. 10, lines 38-58, Claim 1).

12. For Claims 5 and 21, Serbiak teaches first and second strips of elastomeric materials, which are fully capable of being attached to the base layer material in a generally tensioned state (elastic layer 28 can be placed in a state of tension while attached to the base layer material by extending the material; col. 7, lines 11-36).

13. For Claim 6, Serbiak teaches the base layer material being tensioned in the machine direction prior to attaching the first and second strips of elastomeric materials to opposite lateral sides of the base layer material (col. 4, lines 49-65, col. 7, lines 1-10; note Morman '992 is incorporated by reference). The bodyside liner of Serbiak is fully capable of having the longitudinal strips of the composite regions be stretchable in the cross direction bordering the center machine direction region of the necked base layer material (Figs. 1-4 and 6, col. 7, lines 1-38).

14. For Claim 9, Serbiak teaches the base layer material being reversibly necked and creped (col. 4, lines 49-65, col. 7, lines 1-10, col. 10, line 38 to col. 11, line 10; note Morman '992 is incorporated by reference). Serbiak teaches the base layer material being reversibly necked prior to attachment of the first and second strips of elastomeric materials to opposite lateral sides of the base layer material, the base layer material being rendered stretchable such that the bodyside liner material is stretchable in the transverse direction and the longitudinal direction (Figs. 1-4 and 6, col. 4, lines 49-65,

col. 7, lines 1-10, col. 10, line 38 to col. 11, line 10). Serbiak is silent as to the base layer material being creped prior to attachment. The limitation of when the creping is done is being treated as a product by process limitation. As set forth in MPEP 2113 product by process claims are not limited to the manipulations of the recited steps, only to the structure implied by the steps. Once a product appearing to be substantially the same or similar is found, a 35 U.S.C. 103 rejection may be made and the burden is shifted to applicant to show an unobvious difference. See MPEP 2113. Thus, even though Serbiak is silent as to the base layer material being creped prior to attachment, it appears that the article in Serbiak would be the same or similar as that claimed. See *In re Thorpe*, 227 USPQ 964 (Fed Cir. 1985), and *Ex parte Masham*, 2 USPQ2d 1647 (BPAI 1987).

15. Claims 12-13 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Serbiak in view of Popp (U.S. 6,716,205).

16. For Claim 12, Serbiak teaches all the limitations of Claim 1, as described above in paragraph 7. Serbiak teaches the composite regions of the bodyside liner defining machine direction strips extending laterally from the center region (Figs. 1-4 and 6, col. 7, lines 1-10, col. 8, lines 8-48). Serbiak teaches the outer cover member and the composite regions of the bodyside liner both being formed of similar materials (col. 6, lines 44-67, col. 7, lines 1-10). Serbiak does not expressly teach each of the composite regions being folded to form a folded composite region at a respective opposite side fold line of the chassis, extending laterally back under the absorbent body structure, and

being attached to each other such that the folded composite regions also define the outer cover member of the chassis. Applicant's specification does not disclose that this configuration serves any stated purpose or solves any particular problem. In addition, this feature is well known in the art. Popp confirms this and teaches elasticized composite strips being folded at a side fold line of the chassis, extending laterally back under the absorbent body structure, and being attached to each other such that the composite regions also define the outer cover member of the chassis (Abstract, Figs. 1-4, col. 5, line 18 to col. 6, line 57). Popp teaches that this configuration creates a bucket for containing body fluids, with a soft and comfortable leg and side seal (col. 1, lines 35-67). It would have been obvious to one of ordinary skill in the art at the time of the invention by the Applicant to modify Serbiak to include each of the composite regions being folded to form a folded composite region at a respective opposite side fold line of the chassis, extending laterally back under the absorbent body structure, and being attached to each other such that the folded composite regions also define the outer cover member of the chassis, as taught by Popp, to create a bucket for containing body fluids, with a soft and comfortable leg and side seal, as taught by Popp.

17. For Claim 13, Serbiak teaches leg elastics 40 (Figs. 1-4 and 6, col. 8, lines 26-48). Serbiak does not expressly teach leg elastics between the folded composite regions. Popp teaches leg elastics between folded composite regions (Abstract, Figs. 1-4, col. 5, line 18 to col. 6, line 57). It would have been obvious to modify Serbiak to include leg elastics between folded composite regions, for the same reasons as described above for Claim 12 in paragraph 16.

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18. For Claim 15, Serbiak does not teach portions of the composite regions of the bodyside liner being folded outboard of the absorbent body structure so as to define longitudinally extending containment flaps on opposite lateral sides of the absorbent body structure. However, containment flaps formed from folded parts of the bodyside liner are well known in the art. Popp confirms this and teaches an absorbent article with containment flaps formed from folded parts of the bodyside liner (Abstract, Figs. 1-4, 7, col. 1, lines 35-63, col. 5, line 18 to col. 6, line 17). Popp teaches that this configuration creates a bucket for containing body fluids with a soft and comfortable leg and side seal (col. 1, lines 60-63). It would have been obvious to one of ordinary skill in the art to modify Serbiak to include containment flaps formed from folded parts of the bodyside liner, as taught by Popp, for the same reasons as described above for Claim 12 in paragraph 16.

19. For Claim 16, Serbiak teaches the composite regions being attached to an underside of the absorbent body structure (Figs. 1-4 and 6, col. 8, lines 8-47).

20. For Claim 17, Serbiak teaches the composite regions of the bodyside liner defining longitudinal strips extending outwardly from the center region and defining elastomeric side panels (Figs. 1-4 and 6, col. 7, line 1 to col. 8, line 48). Serbiak teaches the absorbent article being a training pant (col. 5, lines 62-67). Serbiak does not expressly teach the elastomeric side panels being attached at side seams of the chassis to define a pant-like structure, with the composite regions folded outboard of the side panels at fold lines and extending laterally back under the absorbent body structure and attached to each other such that the composite regions define the outer cover

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member of the chassis. Applicant's specification does not disclose that this configuration serves any stated purpose or solves any particular problem. In addition, elastomeric side panels attached at side seams to define a pant-like structure are well known in the art; side panels folded outboard and extending laterally back under the absorbent body structure and attached to each other such that the composite regions define the outer cover member are also well known in the art. Popp confirms this and teaches a training pant with elastomeric side panels attached at side seams of the chassis to define a pant-like structure, with the composite regions folded outboard of the side panels at fold lines and extending laterally back under the absorbent body structure and attached to each other such that the composite regions define the outer cover member of the chassis (Abstract, Figs. 1-4, col. 5, line 18 to col. 6, line 57). Popp teaches that this configuration creates a bucket for containing body fluids, with a soft and comfortable leg and side seal (col. 1, lines 35-67). In light of Serbiak's teaching of a training pant, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Serbiak to include the elastomeric side panels being attached at side seams of the chassis to define a pant-like structure, with the composite regions folded outboard of the side panels at fold lines and extending laterally back under the absorbent body structure and attached to each other such that the composite regions define the outer cover member of the chassis, as taught by Popp, to create a bucket for containing body fluids, with a soft and comfortable leg and side seal, as taught by Popp.

Conclusion

21. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **PAULA L. CRAIG** whose telephone number is (571)272-5964. The examiner can normally be reached on M-F 8:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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